



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

FWS-R4-ES-2011-N195

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Spring Pygmy Sunfish Candidate Conservation Agreement with Assurances; Receipt of Application for Enhancement of Survival Permit; Beaverdam Springs, Limestone County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from Mr. Banks Sewell of Belle Mina Farm Ltd. (applicant) for an enhancement of survival permit (permit) under the Endangered Species Act of 1973, as amended (Act). The permit

application includes a proposed candidate conservation agreement with assurances (CCAA), between the applicant, the Land Trust of Huntsville and North Alabama, and the Service for the spring pygmy sunfish. The CCAA would be implemented at the Beaverdam--Moss Creek/Spring Complex within Limestone County, Alabama. We have made a preliminary determination that the proposed CCAA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this preliminary determination is contained in a draft environmental action statement (EAS). We are accepting comments on the permit application, the proposed CCAA, and the draft EAS.

DATES: We must receive comments no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Persons wishing to review the application, the draft CCAA, and the draft EAS may obtain copies by request from Daniel Drennen, Mississippi Field Office, by phone at 601-321-1127, or via mail or email (see below). The application and related documents will also be available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Jackson, Mississippi, Field Office (address listed below) or on our website at <http://www.fws.gov/mississippiES/endsp.html>.

Comments concerning the application, the draft CCAA, and the draft EAS should be submitted in writing, by one of the following methods:

Email: daniel_drennen@fws.gov.

Fax: 601-965-4340.

U.S. mail: Daniel Drennen, Mississippi Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, MS 39213.

Please refer to Permit number TE-40219A-0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Drennen, Fish and Wildlife Biologist, Mississippi Field Office, 601-321-1127. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION: We furnish this notice to provide the public, other State and Federal agencies, and interested Tribes an opportunity to review and comment on the permit application, including the draft CCAA and draft EAS. We specifically request information, views, and opinions from the public on the proposed Federal action of issuing a permit. Further, we solicit information regarding the adequacy of the permit application, including the proposed CCAA, as measured against our permit issuance criteria found in the Code of Federal Regulations (CFR) at 50 CFR §§17.22(d) and 17.32(d).

Background

Under a Candidate Conservation Agreement with Assurances, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species that are proposed for listing under the Act, candidates for listing, or that may become candidates or proposed for listing. Candidate Conservation Agreements with Assurances (CCAAs), and the associated permits we issue under section 10(a)(1)(A) of the Act (16 U.S.C. 1531. et seq.), encourage private and other non-Federal property owners to implement conservation efforts for species by assuring property owners that they will not be subjected to increased land use restrictions if that species becomes listed under the Act in the future provided certain conditions are met. Application requirements and issuance criteria for permits through CCAAs are found in the Code of Federal Regulations (CFR) at 50 CFR §§17.22(d) and 17.32(d). See also our policy on CCAAs (64 FR 32 726; June 17, 1999).

The conservation of the spring pygmy sunfish (*Elassoma alabamae*) is of concern to the Service, other biologists, and the landowners whose properties contain the species. The spring pygmy sunfish is a spring-associated fish, endemic to the Tennessee River drainage of Lauderdale and Limestone Counties in northern Alabama. The species historically occurred in three distinct spring complexes (Cave Springs, Lauderdale County; Beaverdam Springs and Pryor Springs, Limestone County). The single remaining population of this species occupies about 5 river miles (mi) (8.05 river kilometers (km)) within four spring pools (Moss, Beaverdam, Thorsen, and Horton Springs) associated with the upper Beaverdam Springs complex in Limestone County, Alabama.

The preferred habitat for the spring pygmy sunfish is clear and colorless to slightly stained spring water, spring runs, and associated spring-fed wetlands (Warren 2004). The species is highly localized within these spring pools and is found in association with patches of dense, filamentous submergent vegetation. Spring pygmy sunfish abundance is correlated with specific water quantity and quality parameters (i.e., water flow velocity, turbidity, and water temperatures) and certain associated species such as amphipods, isopods, spring salamanders, crayfish, and snails (Sandel, pers. comm., 2007).

On April 1, 2011, the Service published a 90-day finding on a petition to list the spring pygmy sunfish as endangered under the Act (76 FR 18138). The Service found that the petition presented substantial scientific or commercial information indicating that listing this species may be warranted, and announced the initiation of a formal status review. For further information on previous Federal actions regarding the species, please refer to the 90-day finding. As a result of our “substantial” 90-day finding, we are currently collecting and analyzing data to assess the species’ status. At the end of the yearlong period, the Service will publish a finding, known commonly as a “12-month finding,” on whether or not listing is warranted. In accordance with court-approved settlement entered into last year with Wild Earth Guardians and the Center for Biological Diversity, if we determine that listing is warranted, our 12-month finding will include a proposed rule to list the spring pygmy sunfish under the Act.

The area to be covered under the proposed CCAA is approximately 3,200 acres

within the Beaverdam Springs complex, owned by the applicant and located in Limestone County, Alabama. The proposed CCAA represents a significant milestone in the cooperative conservation efforts for this species and is consistent with section 2(a)(5) of the Act, which encourages creative partnerships among public, private, and government entities to conserve imperiled species and their habitats.

The applicant agrees to implement conservation measures to address known threats to the spring pygmy sunfish. These measures will help protect the species in the near term and also minimize any incidental take of the species that might occur as a result of conducting other covered activities, if the species becomes listed under the Act in the future.

Conservation measures to be implemented by the applicant include: (1) maintaining up to a 150-foot vegetated buffer zone around Moss Spring Pond; (2) prohibiting cattle access to Moss Spring Pond and the buffer zone described above; (3) creating a protected area of approximately 150 acres, with a 100-150 foot vegetated buffer zone, within the Beaverdam Spring/Creek area, including a portion of "Lowe Ditch"; and (4) refraining from any deforestation, land clearing, industrial development, residential development, aquaculture, temporary or permanent ground water removal installations, stocked farm ponds, pesticide and herbicide use, and impervious surface installation without prior consultation with the Service and the Service's written agreement.

The Land Trust of Huntsville and North Alabama agrees: (1) to be responsible for all reporting requirements, including any changes to the monitoring when necessary for adaptive management; (2) to ensure that annual habitat analyses and site samplings are performed as

specified by the CCAA; and (3) to provide funding for part or all of said monitoring activities.

The Service agrees to authorize the applicant to engage in incidental take of the spring pygmy sunfish consistent with this CCAA and to provide technical assistance, including management advice.

The term of the proposed CCAA and associated enhancement of survival permit is twenty (20) years. However, under a special provision of this CCAA, if at any time a 15-percent decline in the status of the species is determined, there will be a reevaluation of the conservation measures set forth in the CCAA. If such a reevaluation reflects a need to change the conservation measures, the revised measures will be implemented by the applicant, or the CCAA will be terminated and the permit surrendered.

When determining whether to issue the permit, we will consider a number of factors and information sources, including the project's administrative record, any public comments we receive, and the application requirements and issuance criteria for CCAs contained in 50 CFR §§17.22(d) and part 17.32(d). We will also evaluate whether the issuance of the permit complies with section 7 of the Act by conducting an intra-Service consultation. Our decision to issue the permit will be based on the results of this consultation, as well as on the above findings, our regulations, and public comments.

The proposed CCAA also provides regulatory assurances to the applicant that, in the

event of changed and/or unforeseen circumstances, we would not require additional conservation measures, or commitment of additional land, water, or resource use restrictions, beyond the level obligated in this agreement, without the consent of the applicant provided certain conditions are met.

We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1) of the Act, our regulations, and NEPA regulations at 40 CFR §1506.6. If we determine that the requirements are met, we will enter into the CCAA and issue a permit under section 10(a)(1)(A) of the Act to the applicant for take of the spring pygmy sunfish in accordance with the terms of the agreement. We will not make a final decision in this matter until after the end of the 30-day comment period, and we will fully consider all comments received during the comment period.

Authority

We provide this notice under both section 10(c) of the Act (16 U.S.C. 1531. et seq.) and its implementing regulations (50 CFR §§17.22 and 17.32), and the National Environmental Policy Act (42 U.S.C 4371 et seq.) and its implementing regulations (40 CFR § 1506.6).

Public Availability of Comments

All comments we receive become part of our administrative record in this matter. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, Privacy Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including personal identifying information—may be made available to the public at any time. While you may ask us to withhold your personal identifying information from public disclosure, we cannot guarantee that we will be able to do so.

Dated: __February 14, 2012_____

Signed: _____

Stephen M. Ricks,
Field Supervisor,
Jackson, Mississippi, Field Office,
Southeast Region.

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